

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 567 of 1997

UNITED INDIA INSURANCE CO.LTD.

Versus

VIMLABEN RAMESHBHAI SHAH

Appearance:

MR PV NANAVATI for Petitioner
MR DN PANDYA for Respondent No. 1
SERVED for Respondent No. 3
M/S TRIVEDI & GUPTA for Respondent No. 5

CORAM : MR.JUSTICE J.M.PANCHAL

Date of Order: 21/10/97

ORAL ORDER

This revision application,which is filed under section 115 C.P.C.,is directed against order dated December 24,1996 passed by the Motor Accident Claims Tribunal, Bharuch below exh.100 in Motor Accident Claims Petition no.877/89 by which prayer made by the petitioner to issue witness summons to opponent no.4 is rejected.

Opponents no.1 to 3 have instituted Motor Accident Claims Petition no.877/89 before Motor Accident Claims Tribunal, Bharuch claiming compensation. During the pendency of the Claim Petition,the petitioner submitted an application at Exh.100 and prayed the Tribunal to issue witness summons to six witnesses who were named therein. After hearing the learned Counsel for the parties, Tribunal issued witness summons to witnesses no.2 to 6 mentioned in application Exh.100, but refused to issue witness summons to opponent no.4 herein on the ground that he is one of the parties to the claim petition and one party cannot examine other rival party. The order dated December 24,1996 by which prayer made by the petitioner to issue witness summons to opponent no.4 herein is rejected, has given rise to the present revision application.

Mr. P.V.Nanavati,learned Counsel for the petitioner submitted that there is no conflict of

interest between the petitioner and opponent no.4 herein and, therefore, application filed by the petitioner should have been granted by the Tribunal. It was claimed that Insurance Company is entitled to examine the driver of the vehicle which is insured by Insurance Company and, therefore, the impugned order deserves to be set aside.

Mr. Devarshi Pandya, learned Counsel for the opponents no.1 to 3 submitted that no error is committed by the Tribunal in passing the impugned order and, therefore, revision application deserves to be rejected. Mr. Kamal B.Trivedi, learned Counsel for opponent no.5 also contended that no jurisdictional error having been committed by the Tribunal, revision application should be rejected.

In my view, the order passed by the Tribunal is totally illegal and cannot be sustained. The respondents have failed to point out that interest of opponent no.4 herein is in no way adverse to that of the petitioner. The fact that the petitioner has insured the vehicle which was being driven by opponent no.4, is not in dispute. The impugned order proceeds on the footings that the petitioner wants to examine rival party. However, the basis on which the impugned order is passed itself is erroneous because as pointed out earlier the petitioner does not want to examine other rival party. The Tribunal has committed material irregularity and illegality in exercise of jurisdiction vested in it. There is no manner of doubt that if the order is allowed to stand, it would occasion failure of justice and cause irreparable injury to the petitioner. Under the circumstances, revision application deserves to be allowed.

For the foregoing reasons, the revision application succeeds. Order dated December 24, 1996 passed by the Motor Accident Claims Tribunal, Bharuch below Exh.100 in Motor Accident Claims Petition no.877/89 by which the Tribunal has refused to issue witness summons to opponent no.4 is set aside and quashed. The Tribunal is directed to issue witness summons to opponent no.4 herein immediately. As the claim petition is instituted in the year 1989, the Tribunal is directed to dispose of Claim Petition on merits as early as possible and without any avoidable delay.

Subject to foregoing direction, rule is made absolute with no order as to costs. Ad-interim relief granted earlier, is hereby vacated.

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